

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
UCN, Inc.,)	
)	
)	
Transferee,)	WC Docket No. 05-198
)	
Transtel Communications, Inc.)	
Tel America of Salt Lake City, Inc.)	
Extelcom, Inc.)	
)	
Transferors,)	
)	
Joint International and Domestic Application for)	
Authority Pursuant to Section 214 of the)	
Communications Act of 1934, as amended, to Transfer)	
Certain Assets of Authorized International and)	
Domestic Carriers)	
)	

To: Chief, Wireline Competition Bureau

**PETITION FOR RECONSIDERATION
OF APCC SERVICES, INC.**

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Dated: July 27, 2005

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To: Chief, Wireline Competition Bureau¹

**PETITION FOR RECONSIDERATION
OF APCC SERVICES, INC.**

APCC Services, Inc., ("APCC Services"),² pursuant to Section 1.106 of the Federal Communications Commission ("FCC" or "Commission") rules, 47 CFR § 1.106, and on

¹ The Public Notice granting the instant application states that the action was taken by the Wireline Competition Bureau but does not state which official of the bureau approved the action. See Public Notice, "Notice of Streamlined Domestic 214 Application Granted," WC Docket No. 05-198, DA 05-1795 at 1 (rel. June 27, 2005) ("*Public Notice*"). APCC Services, Inc., intends to address this petition to whichever bureau official approved the action.

² APCC Services is an agent of payphone service providers ("PSPs") for the billing and collection of dial-around compensation.

behalf of itself and the payphone service providers ("PSPs") it represents, hereby petitions for reconsideration of the Wireline Competition Bureau's decision granting the application of UCN, Inc. ("UCN") and Transtel Communications, Inc. ("Transtel") for Commission authorization for the transfer of assets of Transtel subsidiaries Tel America of Salt Lake City, Inc. ("Tel America"), and Extelcom, Inc., d/b/a Express Tel ("Express Tel"), to UCN.

I. BACKGROUND

On May 25, 2005, the Wireline Competition Bureau issued a public notice seeking comment on the acquisition of assets of Tel America and Express Tel by UCN. On June 8, 2005, APCC Services filed comments requesting the Commission either to deny the application or to condition or defer grant of the application in order to address the concerns raised in APCC Services' comments.

Explaining that Tel America – one of the transferor's subsidiaries whose assets would be transferred pursuant to the instant application – had refused to pay more than \$500,000 in dial-around compensation in violation of the Commission's *True-Up Order* and compensation rules,³ APCC Services contended that there is a significant likelihood that the transferors would use the instant transaction to attempt to evade payment of their compensation obligations.⁴ Once the transaction is concluded, Tel America is

³ *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Fifth Order on Reconsideration and Order on Remand, 17 FCC Rcd 21274 (2002) ("*Payphone Compensation True-Up Order*"), *aff'd AT&T v. FCC*, 363 F.3d 504 (D.C. Cir. 2004). On May 16, 2003, APCC Services billed Tel America pursuant to the *Payphone Compensation True-Up Order* on behalf of more than 1,000 PSPs for more than \$500,000 in dial-around compensation owed by Tel America to those PSPs for the period from November 1996 through March 1998. Tel America refused to pay, claiming that the FCC's order is illegal, even though it was upheld by the court of appeals.

⁴ There is currently an informal complaint proceeding pending against Tel America for recovery of the unpaid compensation. See Comments of APCC Services, Inc., filed June 8, 2005, Exh. 1 (copy of the informal complaint filed by APCC Services,

likely to argue that it is no longer a common carrier subject to FCC jurisdiction. In addition, once Tel America divests its telecommunications assets, there is likely to be no effective means of compelling payment.

Therefore, APCC Services urged the Commission either to deny the application or to condition its approval on payment of the unpaid compensation that Tel America owes to the PSPs represented by APCC Services. At a minimum, APCC Services stated, the Commission should defer grant of the application pending a determination whether Tel America's non-payment of compensation violates the FCC payphone compensation rule.

On June 27, 2005, the Bureau granted the application. In concluding that "the concerns raised by APCC [Services] are not sufficient to persuade us to remove the application from streamlined treatment" or to impose any conditions on the transfer, the Bureau "rel[ied] on the Applicants' assertions that it would be improper to delay this transaction based on an unadjudicated claim in a pending Commission complaint proceeding." *Public Notice* at 2.

II. DISCUSSION

In dismissing APCC Services' objections to the instant application, the Bureau failed to recognize the critical factors that distinguish this case from the typical situation where a transfer applicant is the subject of "an unadjudicated claim in a pending Commission complaint proceeding." *Id.*

(footnote continued)

Inc., *et al.* against Tel America, December 30, 2004, File No. EB-04-MDIC-0118). As Tel America has not satisfied the informal complaint, APCC Services intends to file a formal complaint against Tel America in the near future.

First, unlike the typical defendant in a complaint proceeding, Tel America does not deny that the *Payphone Compensation True-Up Order* requires Tel America to pay compensation and that it has not done so. Thus, there is no question that Tel America has violated a Commission order. The only real dispute concerns whether the order is legal. Tel America is challenging whether it is bound to comply with an explicit obligation imposed on Tel America by a Commission order. Tel America has even refused to participate in mediation to resolve the issue of its compliance.⁵

Second, in the typical situation in which an “unadjudicated claim” is raised against a transfer applicant, the grant of the application has no effect on the unadjudicated claim itself. The only issue in the typical case is whether the unadjudicated claim should be assumed to be true for purposes of evaluating the applicant’s qualifications to hold a Commission-administered license or certificate. The fact that the claim is unadjudicated means that the claim should not be assumed to be true for that purpose.

Here, the situation is quite different. The typical issue, as to whether the *unadjudicated claim* has an impact on the applicant’s qualifications and thus on whether *granting the application* serves the public interest, is not present. Instead, it is the *grant of the application* that has an adverse impact on whether the Commission will be able to adjudicate the *unadjudicated claim*. As APCC Services explained, there is a significant likelihood that the transferors would use the instant transaction to attempt to evade payment of Tel America’s compensation obligations. First, after the transaction is consummated, Tel America will have exited the common carrier industry and is likely

⁵ See Letter to Marlene H. Dortch, Secretary, from James U. Troup, McGuireWoods LLP, FCC File No. EB-04-MDIC-0087 (June 25, 2004). This is a matter of public record, of which the Commission can take administrative notice.

to claim that it is no longer subject to the Commission's jurisdiction. Second, once the transaction is consummated, Tel America will have divested its assets and is likely to become judgment-proof.

In these circumstances, the fact that the claim is unadjudicated cannot be controlling, because it is the Commission's adjudicative process itself that is threatened. And, as APCC explained in its comments, the threat is quite real. In numerous prior cases, complaint proceedings involving unpaid payphone compensation have been untimely terminated when the defendants declared bankruptcy or simply disappeared. *See APCC Services Comments at 6.*

Moreover, the precedent set by the Bureau's action will encourage other carriers to evade their payphone compensation obligations (as well as their obligations under other Commission rules). There are hundreds of carriers who are required to make payphone compensation payments under the Commission's recently revised compensation rule. 47 CFR §§ 64.1300-1320 (2004). A large percentage of these carriers have simply ignored their compensation payment obligations under the revised rule. The Bureau's action will encourage carriers to continue to flout the Commission's rules. Carriers will calculate that, even if they are caught, it will not matter, because they can sell their telecommunications assets and thereby frustrate the Commission's ability to compel payment.

While it is not in the public interest for the Commission to allow any of its rules to be flouted in this manner, the payphone compensation rule is a special case. As the Commission has recognized in numerous recent decisions, payphones are a key

telecommunications resource,⁶ but the availability of sufficient payphones is seriously threatened. *Id.* at 15642, 15644-45. Moreover, the payphone compensation system established by the Commission is fundamental to maintaining the “widespread deployment” of payphones mandated by Congress.⁷

Therefore, the Commission and this Bureau have devoted considerable resources to adopting rules that will ensure that small carriers like Tel America do not evade their compensation obligations.⁸ The Bureau’s order in the instant case, however, undermines its own efforts to strengthen the payphone compensation system. It signals that the payphone compensation rule is not significant enough to justify any steps to prevent carriers from avoiding their payment obligations by selling off telecommunications assets.

Therefore, the Commission should reconsider and deny the instant application or should condition approval on payment of the unpaid payphone compensation that Tel America owes to PSPs. At a minimum, the Commission must remove the application

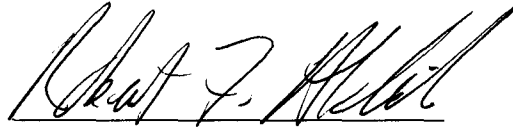
⁶ *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, First Report and Order, 11 FCC Rcd 20541 ¶ 7, Third Report and Order and Order on Reconsideration of Second Report and Order, 14 FCC Rcd 2545, 2550-51 (1999); *Wisconsin Public Service Commission, Order Directing Filings*, Memorandum Opinion and Order, 17 FCC Rcd 2051 2052-53 (2002); *Request to Update Default Compensation Rate for Dial-Around Calls from Payphones*, WC Docket No. 03-225, 19 FCC Rcd 15636, 15644 (2004) (“Per-Call Compensation Rate Order”).

⁷ See 47 U.S.C. § 276(b), (b)(1)(A) (mandating that PSPs be fairly compensated in order to “promote the widespread deployment of payphone services”); *First Payphone Order* ¶¶ 48, 52; *Third Payphone Order* at 2550-51; *Per-Call Compensation Rate Order* at 15642, 15644-45.

⁸ See *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 18 FCC Rcd 19975 (2003) (“Tollgate Order”), *recon.*, 19 FCC Rcd 21457 (2004) (“Tollgate Reconsideration Order”).

from streamlined processing in order to determine whether Tel America's non-payment of compensation violates the Commission's payphone compensation rule.⁹

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Albert H. Kramer", written over a horizontal line.

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Dated: July 27, 2005

⁹ If the Commission is not willing to deny the application or to condition grant on payment of the unpaid payphone compensation, the Commission must require, as a condition of approval of the transfer, that UCN, which will remain a common carrier and which does not have a history of evading its compensation obligations, should certify that it has assumed responsibility for any unpaid payphone compensation obligations of Transtel, Tel America, and Express Tel. Although this alternative is inadequate because it would allow Transtel and Tel America to profit from this transaction even though they are in violation of the Commission's rules, at least it would enable PSPs to recover the unpaid compensation, and thus would mitigate the effects of the transferors' rule violations.

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2005, I caused a copy of the foregoing Petition for Reconsideration to be served by electronic mail on the following:

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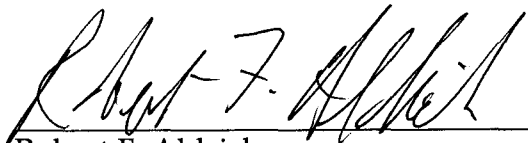
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